

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

PAO XIONG,

Petitioner,

v.

Case No. 11-C-474

UNITED STATES OF AMERICA,

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

On May 3, 2012, I denied Petitioner Pao (aka “Danny”) Xiong’s motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his conviction based on his allegations that his trial counsel’s representation was ineffective. (Order, ECF No. 20.) I also denied his request for an evidentiary hearing, concluding that the record conclusively demonstrated Petitioner was not entitled to relief on his § 2255 motion. (*Id.* at 8.) The case is before me now on Petitioner’s motion to grant him a certificate of appealability.

Petitioner must have a certificate of appealability if he is to appeal this denial of his petition for post conviction relief brought pursuant to 28 U.S.C. § 2255. *See* 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22; Rule 11 Governing § 2255 Proceedings. Such a certificate shall issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” § 2253(c)(2). Before issuing a certificate of appealability, a district court must find that the issues the applicant wishes to raise are ones that “are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to

proceed further.” *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983).

Here I conclude Petitioner has not made a substantial showing of a denial of a constitutional right. His petition demonstrated neither the cause nor prejudice prongs of the *Strickland* test for ineffective assistance of counsel. Because his petition therefore failed on multiple bases, the issues Petitioner presents do not deserve encourage to proceed further. Therefore, IT IS ORDERED that the certificate of appealability is DENIED.

Dated this 11th day of July, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge